

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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TARA READE,

Plaintiff,

v.

THE NEW YORK TIMES COMPANY,

Defendant.

No. 2:22-cv-00543 WBS KJN

ORDER RE: DEFENDANT'S MOTION
FOR ATTORNEYS' FEES

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The court previously granted defendant's motion to dismiss and motion to strike under California's anti-SLAPP statute, Cal. Code Civ. P. § 425.16. (Docket No. 21.) Judgment pursuant to that order was entered on October 14, 2022. (Docket No. 30.) Defendant filed a motion for attorneys' fees on December 13, 2022. ("Mot." (Docket No. 33).)

Notwithstanding the passage of more than three months since the motion for attorneys' fees was filed, plaintiff has not filed an opposition. When contacted by the court, plaintiff's counsel of record stated that he would not be filing an

1 opposition or any other pleadings in response to this motion.
2 Accordingly, the court will construe plaintiff's failure to file
3 an opposition as non-opposition to the motion and will decide the
4 motion on the papers without oral argument pursuant to Local Rule
5 230(g). See L.R. 230(c); see also Winters v. Jordan, No. 2:09-
6 cv-00522, 2011 WL 240871, at *2 (E.D. Cal. Jan. 24, 2011)
7 (interpreting "failure to file written oppositions" as "a
8 statement of non-opposition" and "consent to the granting of . .
9 . motions for attorney's fees").

10 It is "well-settled" that a defendant who prevails on a
11 motion to strike brought under the anti-SLAPP statute is entitled
12 to fees and costs. Shepard v. Miler, No. 2:10-cv-1863 WBS, 2011
13 WL 1740603, at *1 (E.D. Cal. May 5, 2011) (citing Ketchum v.
14 Moses, 24 Cal. 4th 1122, 1131 (2001); Verizon Del., Inc. v. Covad
15 Commc'ns Co., 377 F.3d 1081, 1091 (9th Cir. 2004)).

16 "State law governs attorney's fees awards based on
17 state fee-shifting laws, like California's anti-SLAPP statute."
18 Graham-Sult v. Clainos, 756 F.3d 724, 751 (9th Cir. 2014).
19 "[T]he fee setting inquiry in California ordinarily begins with
20 the 'lodestar,' i.e., the number of hours reasonably expended
21 multiplied by the reasonable hourly rate." PLCM Grp. v. Drexler,
22 22 Cal. 4th 1084, 1095 (2000); see Ketchum, 24 Cal. 4th at 1131
23 (indicating that the lodestar is used to calculate fees under the
24 anti-SLAPP statute). "The reasonable hourly rate is that
25 prevailing in the community for similar work." PLCM Grp., 22
26 Cal. 4th at 1095. The lodestar may then be adjusted upward or
27 downward by the court based on relevant factors. Ketchum, 24
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1 Cal. 4th at 1132.¹

2 Defendant proposes a lodestar figure of \$70,645, based
3 on 167.9 hours billed by six attorneys (five in-house New York
4 Times attorneys and one Los Angeles-based attorney admitted to
5 the Eastern District), at hourly rates ranging from \$300 to \$600.
6 (Mot. at 3-6). Defendant provides itemized billing of the work
7 performed on the anti-SLAPP motion, broken down by each attorney.
8 (See Ex. A (Docket No. 33-1); Ex. B (Docket No. 33-2).)

9 Some of the rates sought are higher than is typically
10 awarded in this district. However, it is undisputed here that
11 there was no media defense counsel available in this district
12 with the experience to bring an anti-SLAPP motion. (See Decl. of
13 Al-Amyn Sumar (Docket No. 33-5) ¶¶ 4-6.) “[R]ates outside of the
14 district in which the court sits may be used ‘if local counsel
15 was unavailable’” Shepard, 2011 WL 1740603, at *4
16 (quoting Gates v. Deukmejian, 987 F.2d 1392, 1405 (9th Cir.

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18 ¹ Local Rule 293(c) provides the following non-exhaustive
19 list of factors that guide a court’s award of attorney’s fees:
20 (1) the time and labor required of the attorney(s), (2) the
21 novelty and difficulty of the questions presented, (3) the skill
22 required to perform the legal service properly, (4) the
23 preclusion of other employment by the attorney(s) because of the
24 acceptance of the action, (5) the customary fee charged in
25 matters of the type involved, (6) whether the fee contracted
26 between the attorney and the client is fixed or contingent, (7)
27 any time limitations imposed by the client or the circumstances,
28 (8) the amount of money, or the value of the rights involved, and
the results obtained, (9) the experience, reputation, and ability
of the attorney(s), (10) the “undesirability” of the action, (11)
the nature and length of the professional relationship between
the attorney and the client, (12) awards in similar actions, and
(13) such other matters as the Court may deem appropriate under
the circumstances. L.R. 293(c); see also Kerr v. Screen Extras
Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975) (identifying the
same factors as relevant).

1 1992)); see also Camacho v. Bridgeport Fin., Inc., 523 F.3d 973,
2 979 (9th Cir. 2008). The rates sought appear consistent with
3 rates that have been approved in the districts in which the
4 attorneys' offices are located. See LaCoste v. Keem, No. 2:20-
5 cv-02323 RGK JPR, 2020 WL 13328478, at *2 (C.D. Cal. Sept. 1,
6 2020) (adopting hourly attorney billing rates ranging from \$450
7 to \$900 in awarding anti-SLAPP attorneys' fees); N.Y. Times Co.
8 v. CIA, 251 F. Supp. 3d 710, 715-16 (S.D.N.Y. 2017) (granting fee
9 request based on hourly rates ranging from \$400 to \$650 for New
10 York Times in-house attorneys).²

11 Defendant contends that the overall fee award sought is
12 reasonable based on numerous factors, including the novelty of
13 the legal issues, the high skill level of the attorneys that
14 worked on the matter, and the results obtained. (Mot. at 5-7.)
15 Defendant also correctly points out that both the number of hours
16 billed and the proposed lodestar figure are lower than in
17 comparable cases involving media companies or personalities.
18 See, e.g., LaCoste, 2020 WL 13328478, at *2 (Central District of
19 California case awarding \$142,095 in attorneys' fees incurred in
20 bringing anti-SLAPP motion, based on 275.3 hours expended);
21 Shepard, 2011 WL 1740603, at *7 (Eastern District of California
22 case awarding \$119,143.05 in attorneys' fees incurred in bringing
23 anti-SLAPP motion and fee motion, based on 335 hours expended);
24 see also Herring Networks, Inc. v. Maddow, No. 3:19-cv-1713 BAS

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26 ² The court also notes that the cases in this district
27 that have rejected comparable rates typically involve different
28 types of claims, such as cases brought under § 1983 or the ADA,
rather than motions to strike pursuant to California's anti-SLAPP
statute.

1 AHG, 2021 WL 409724, at *11 (S.D. Cal. Feb. 5, 2021) (Southern
2 District of California case awarding \$247,667.50 in attorneys'
3 fees incurred in bringing anti-SLAPP motion and fee motion, based
4 on 384.28 hours expended).

5 In addition to attorneys' fees, defendant seeks \$850.09
6 in costs, specifically \$836.63 in filing fees and \$13.46 in
7 mailing charges. (See Ex. B at 9.)

8 Because defendant's requested fee and cost award
9 appears reasonable based on the information before the court and
10 plaintiff has not offered any argument or evidence in opposition,
11 the court finds defendant is entitled to attorneys' fees and
12 costs as a prevailing party and shall be awarded the same in the
13 requested sums. Defendant is hereby awarded \$70,645 in
14 attorneys' fees, \$850.09 in costs, and any additional fees and
15 costs incurred in connection with the filing of this motion.

16 IT IS SO ORDERED.

17 Dated: March 21, 2023



18 **WILLIAM B. SHUBB**
19 **UNITED STATES DISTRICT JUDGE**
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